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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,823	10/15/2001	James J. Rudnick	498-67 CON3	4655

7590 05/12/2009
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EXAMINER

SCHILLINGER, ANN M

ART UNIT	PAPER NUMBER
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3774

MAIL DATE	DELIVERY MODE
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05/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/977,823	RUDNICK ET AL.	
	Examiner	Art Unit	
	ANN SCHILLINGER	3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-53 is/are pending in the application.
- 4a) Of the above claim(s) 25,36,37 and 43-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-24,26-35, and 38-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19-21, 23, 24, 26, 27, 30-35, and 38-42 are rejected under 35 U.S.C. 102(e) as being unpatentable over Lau et al. (US Pat. No. 6,165,210). Lau et al. discloses the following of the claimed invention: an elongate tubular stent (122) formed of a helically wound wire defining non-overlapping, longitudinally nested wire waves (104) with varying amplitudes and uniform windings (please see Figures 1a-2). Lau et al. further discloses that the waves each have a wave peak and a pair of leg segments having a generally equal length and extend from the peak (Figures 1a-2). The wave-like pattern of Lau et al. is formed by a plurality of continually repeating waves that form sinusoidal and triangular patterns (Figures 1a-2). The stent may be constructed into various patterns from a single, continuous helically wound wire (please see Figures 1a-2; col. 9, line 66 through col. 10, line 28). Lau et al. also teaches that the tubular stent is expandable (please see abstract).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lau et al. in view of Song (US Pat. No. 5,330,500). Lau et al. discloses the invention substantially as claimed, however, Lau et al. does not disclose a cover on the stent. Song teaches a stent with a mesh cover that may be coated with silicone rubber in col. 3, line 40-62 for the purpose of preventing cell penetration into the prosthesis. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lau et al. by placing a cover on the stent as taught by Song in order to prevent cell penetration.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau et al. in view of Wiktor (US Pat. No. 5,653,727). Lau et al. discloses the invention substantially as claimed, however, Lau et al. does not disclose the leg segments of the waves being of unequal length. Wiktor teaches a stent with unequal leg segments in Figure 8; col. 5, lines 25-30; and col. 7, lines 16-28 for the purpose of preventing the stent from overstretching. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lau et al. by making the leg segments with an unequal length as taught by Wiktor in order to prevent overstretching.

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Response to Amendment

The Affidavit filed on 2/23/2009 under 37 CFR 1.131 has been considered is sufficient to overcome the Das reference.

Response to Arguments

In view of the amendments made to the specification and the claims as submitted on 2/23/2009, the objection to the specification and the 35 U.S.C. 112 rejections are withdrawn.

The requirement for a “prior art” label on Figure 1 is also withdrawn.

Applicant's arguments with respect to claims 19-24, 26-35, and 38-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738